
(2008) 09 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 18609 of 2006

M.R.K. Transportation

APPELLANT

Vs

Bharath Petroleum Corporation Ltd. and Another

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Citation : (2008) ILR (Kar) 4845 : (2008) 4 KCCR 2665

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Vivek Reddy, for K.N. Subba Reddy, for the Appellant; Sreedevi and K. Suman, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a person who had participated in a tender invited by the respondents - M/s. Bharat Petroleum Corporation Limited inviting offers from intending bidders quoting rates for transportation of petroleum products from Devangonthi to various places in and around Bangalore and who is aggrieved that the respondents did not even show the courtesy of examining the bid offered by the petitioner.

2. It is complaining that the petitioner has been denied fair opportunity of participation in the tender process, the present writ petition.

3. The respondents had been put on notice and are represented by M/s. K Suman & Smt. Sridevi, Advocates who have also filed statement of objections.

4. The sole defence which is put forward by the respondents for not considering the offer made by the petitioner is that even in terms of Clause-20 of the tender conditions the petitioner was not eligible for participating in the tender and therefore the respondents are justified in not examining the offer of the petitioner.

5. The relevant clause i.e., Clause-20 in the tender conditions reads as under:

20. Public carriers, vehicle operators [PCVOs]/Tank Lorries terminated by any of the Oil companies for malpractices are not eligible to participate in the tender.

6. The only dispute is as to whether the petitioner is caught within the mischief of this clause or otherwise. According to the petitioner, the petitioner is not and according to the respondents, Clause-20 is attracted to the petitioner.

7. Appearing on behalf of the petitioner, Sri. Vivek Reddy, learned Counsel would submit that while it is a fact that a contract which had been obtained by the present proprietor of the firm which had offered the bid had been terminated by the respondent - Corporation and further the Corporation had also blacklisted the proprietor and that had been made subject matter of proceedings before this Court and ultimately in the writ appeal preferred by the petitioner while the termination of contract had been upheld, blacklisting the petitioner had been set aside reserving liberty to the respondent - company to pass any such order or to blacklist the petitioner only after giving an opportunity to the petitioner.

8. While learned Counsel for the respondents would submit that the petitioner has in fact been subsequently blacklisted also, learned Counsel for the petitioner would dispute this saying that it is not to the knowledge of the petitioner etc.

9. Be that as it may, there is no dispute that proprietor of the present concern in the name and style of M/s. M R K Transportation being Mr. M K Prakash happened to be the proprietor of the erstwhile concern owner which had obtained the contract and which had been cancelled by the respondents and the erstwhile firm that had been styled as "M K Transports" albeit represented by its proprietor M K Prakash, is the proprietor of the present petitioner also.

10. It is in this regard, Sri. Vivek Reddy, learned Counsel for the petitioner submits that the disqualification in terms of Clause-20 is only in respect of vehicles and firms or the bidders in their trading names and not attributable to the proprietors etc.

11. The present concern M/s. MRK Transportation is not any legal person but is only a business name represented by its proprietor M K Prakash. Even the erstwhile firm or business name which was not any independent legal entity but was a business name and the very person M K Prakash was the proprietor of that concern also. The disqualification in terms of Clause-20 attaches to public carrier vehicle operators. The operator is the proprietor of the vehicle and the firm which offers the bids.

12. The contract is between the respondent -Corporation and the person who offers the bids. If an erstwhile contractor who is disqualified was one having a business name and owned by a particular individual and even if the subsequent concern which seeks to enter into a contract bears a different business name but is owned by the very person who was the owner of an earlier concern which was disqualified, I am of the view that the Corporation is justified in not examining the offer of the petitioner in terms of Clause-20 as it is the very person who is

acting for implementation of the contract with the respondent - Corporation and who is responsible for the failure to perform etc.

13. I do not find any illegality or any irregularity or denial of a fair opportunity to the petitioner as the respondent - Corporation could not examine the case of the petitioner in terms of Clause-20 of the tender conditions and therefore this writ petition is dismissed.